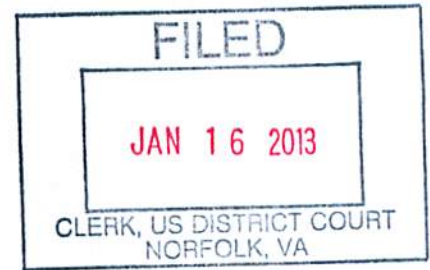


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA



\_\_\_\_\_  
FRIENDS OF BACK BAY and  
BACK BAY RESTORATION  
FOUNDATION, LTD.,

Plaintiffs,

v.

\_\_\_\_\_  
UNITED STATES ARMY CORPS OF  
ENGINEERS, et al.

Defendants.  
\_\_\_\_\_

Civ. No. 2:10cv00270

**[PROPOSED] AGREED ORDER**

This matter is before the Court pursuant to the United States Court of Appeals for the Fourth Circuit's opinion in *Friends of Back Bay v. U.S. Army Corps of Engineers*, No. 11-1184, which was issued on June 18, 2012, and the Fourth Circuit's mandate entered on August 22, 2012. ECF No. 103.

In this case, Plaintiffs challenged the United States Army Corps of Engineers' ("Corps") decision to authorize Department of Army Permit No. 04-V2213 ("the Permit") for a project involving the construction and operation of a mooring facility and a launching facility in portions of Virginia's Back Bay estuary and the adequacy of the Corps' environmental review of the permitted project as required by the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 et seq. By Order entered on February 8, 2011, ECF No. 85, this Court denied Plaintiffs' motion for summary judgment, ECF No. 67, and granted Defendants' motion for summary judgment, ECF No. 75. Plaintiffs appealed from this Court's judgment. Thereafter, in its June 18, 2012 opinion, the Fourth Circuit vacated the judgment and remanded the matter for this

Court to remand to the Corps for preparation of an Environmental Impact Statement ("EIS"), and for such other and further proceedings as may be appropriate.

Therefore, by agreement of Plaintiffs and Defendants, by and through their respective counsel, **IT IS HEREBY ORDERED THAT**

- 1) Plaintiffs' Motion for Summary Judgment, ECF No. 67, is GRANTED with respect to their claim under NEPA, consistent with the Fourth Circuit's June 18, 2012 Opinion;
- 2) Defendants' Motion for Summary Judgment, ECF No. 75, is DENIED;
- 3) The matter is REMANDED to the Corps for preparation of an EIS and issuance of a new permit decision, and the Corps is directed to stay or suspend the Permit pending preparation of the EIS and issuance of a new permit decision;
- 4) The Corps will give the permittee 120 days to determine whether it intends to move forward with the section 404 permitting process for the permitted project. If the permittee responds that it does not intend to do so, or if the permittee fails to respond, then the Corps will revoke the Permit and will not commence preparation of an EIS. If the permittee indicates its intent to move forward with the section 404 project, then the Corps will initiate the EIS process. If at any point during the EIS process the permittee decides not to move forward with the permitted project, then the Corps will cease the EIS process and revoke the Permit.

If the permittee (or its successor) were subsequently to submit a new application for the same or similar project at the same location, the Corps will recommence preparation of an EIS.

The Clerk is DIRECTED to forward a copy of the Agreed Order to counsel of record for Plaintiffs and for Defendants.

**IT IS SO ORDERED.**

1/16/13

/s/  
Henry Coke Morgan, Jr.  
Senior United States District Judge  
UNITED STATES DISTRICT JUDGE

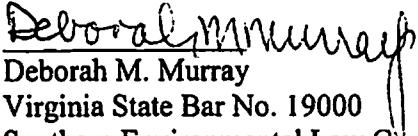
*AMC*

At Norfolk, Virginia

Date:

WE ASK FOR THIS:

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At Norfolk, Virginia

Date:

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